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SENATE BILL 33

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Roman M. Maes III

FOR THE ECONOMIC AND

RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; PROVIDING FOR INVESTMENTS OF THE SEVERANCE TAX PERMANENT FUND FOR ECONOMIC DEVELOPMENT IN NEW MEXICO; CREATING THE NEW MEXICO CENTERS OF EXCELLENCE FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2003, Chapter 399, Section 2 and by Laws 2003, Chapter 401, Section 1 and also by Laws 2003, Chapter 406, Section 1) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS. --

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this

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1 section.

2 B. In making investments pursuant to Subsection A
3 of this section, the council shall make investments in New
4 Mexico private equity funds or New Mexico businesses whose
5 investments or enterprises enhance the economic development
6 objectives of the state.

7 C. The state investment officer shall make
8 investments pursuant to Subsection A of this section only upon
9 approval of the council, upon review of the recommendation of
10 the private equity investment advisory committee and within
11 guidelines and policies established by the council.

12 D. As used in this section:

13 (1) "New Mexico business" means, in the case
14 of a corporation or limited liability company, a business with
15 its principal office and a majority of its full-time employees
16 located in New Mexico or, in the case of a limited partnership,
17 a business with its principal place of business and eighty
18 percent of its assets located in New Mexico; and

19 (2) "New Mexico private equity fund" means a
20 limited partnership, limited liability company or corporation
21 organized and operating in the United States and maintaining an
22 office staffed by a full-time investment officer in New Mexico
23 that:

24 (a) has as its primary business activity
25 the investment of funds in return for equity in or debt of

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1 businesses for the purpose of providing capital for start-up,
2 expansion, product or market development, recapitalization or
3 similar business purposes;

4 (b) holds out the prospects for capital
5 appreciation from such investments;

6 (c) has at least one full-time manager
7 with at least three years of professional experience in
8 assessing the growth prospects of businesses or evaluating
9 business plans and who has established permanent residency in
10 the state;

11 (d) is committed to investing or helps
12 secure investing by others, in an amount at least equal to the
13 total investment made by the state investment officer in that
14 fund pursuant to this section, in businesses with a principal
15 place of business in the state and that hold promise for
16 attracting additional capital from individual or institutional
17 investors nationwide for businesses in the state; and

18 (e) accepts investments only from
19 accredited investors as that term is defined in Section 2 of
20 the federal Securities Act of 1933, as amended, (15 USCA
21 Section 77(b)) and rules and regulations promulgated pursuant
22 to that section.

23 E. The state investment officer is authorized to
24 make investments in New Mexico businesses to create new job
25 opportunities and to support new, emerging or expanding

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1 businesses in a manner consistent with the constitution of New
2 Mexico if:

3 (1) the investments are made in conjunction
4 with cooperative investment agreements with parties that have
5 demonstrated abilities and relationships in making investments
6 in new, emerging or expanding businesses;

7 (2) an investment in any one business does not
8 exceed ten percent of the amount available for investment
9 pursuant to this section; and

10 (3) the investments represent no more than
11 fifty-one percent of the total investment capital in a
12 business; provided, however, that nothing in this subsection
13 prohibits the ownership of more than fifty-one percent of the
14 total investment capital in a New Mexico business if the
15 additional ownership interest:

16 (a) is due to foreclosure or other
17 action by the state investment officer pursuant to agreements
18 with the business or other investors in that business;

19 (b) is necessary to protect the
20 investment; and

21 (c) does not require an additional
22 investment of the severance tax permanent fund.

23 F. The state investment officer shall make a
24 commitment to the small business investment corporation
25 pursuant to the Small Business Investment Act to invest

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1 one-fourth percent of the market value of the severance tax
2 permanent fund [~~by July 1, 2001~~] to create new job
3 opportunities by providing capital for land, buildings or
4 infrastructure for facilities to support new or expanding
5 businesses and to otherwise make investments to create new job
6 opportunities to support new or expanding businesses in a
7 manner consistent with the constitution of New Mexico. On July
8 1 [~~2003 and on each July 1 thereafter~~] of each year, the state
9 investment officer shall determine whether the invested capital
10 in the small business investment corporation is less than one-
11 fourth percent of the market value of the severance tax
12 permanent fund. If the invested capital in the small business
13 investment corporation equals less than one-fourth percent of
14 the market value of the severance tax permanent fund, further
15 commitments shall be made until the invested capital is equal
16 to one-fourth percent of the market value of the fund.

17 G. The state investment officer shall report
18 semiannually on the New Mexico private equity investments made
19 pursuant to this section. Annually, a report shall be
20 submitted to the legislature prior to the beginning of each
21 regular legislative session and a second report no later than
22 October 1 each year to the legislative finance committee, the
23 revenue stabilization and tax policy committee and any other
24 appropriate interim committee. Each report shall provide the
25 amounts invested in each New Mexico private equity fund, as

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1 well as information about the objectives of the funds, the
2 companies in which each fund is invested and how each
3 investment enhances the economic development objectives of the
4 state. Each report shall provide the amounts invested in each
5 New Mexico business.

6 H. The state investment officer shall make a
7 commitment to invest one-fourth percent of the market value of
8 the severance tax permanent fund by July 1, 2004 in a limited
9 partnership interest in the New Mexico centers of excellence
10 fund.

11 Section 2. A new section of Chapter 9, Article 15 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] NEW MEXICO CENTERS OF EXCELLENCE FUND
14 CREATED. --The "New Mexico centers of excellence fund" is
15 created in the state treasury. The fund shall consist of money
16 invested in the fund by the state investment officer from the
17 severance tax permanent fund pursuant to Section 7-27-5.15 NMSA
18 1978 and from limited partnership investments from businesses
19 and financial institutions and foundations, money appropriated
20 to the fund or money otherwise accruing. Money in the fund is
21 appropriated to the department for the purpose of collaborating
22 with the state's universities to make and manage early stage
23 equity investments in new or expanding businesses in New Mexico
24 that possess technologies with promising prospects for
25 commercialization to stimulate job growth. Money in the fund

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1 shall not revert to the general fund at the end of a fiscal
2 year. The fund shall be administered by the department.
3 Disbursements from the fund shall be made only upon warrant
4 drawn by the secretary of finance and administration pursuant
5 to vouchers signed by the secretary of economic development. "

6 Section 3. A new section of Chapter 9, Article 15 NMSA
7 1978 is enacted to read:

8 "[NEW MATERIAL] DUTIES OF THE SECRETARY. --The secretary
9 shall appoint a manager for the New Mexico centers of
10 excellence fund that:

11 A. is a New Mexico limited partnership, limited
12 liability company or corporation organized and operating in New
13 Mexico that maintains its principal place of business in New
14 Mexico and an office in New Mexico that is staffed by at least
15 one full-time investment officer;

16 B. has as its primary business activity the
17 investment of funds in return for equity or debt securities in
18 businesses for the purpose of providing capital for start-up,
19 expansion, technology commercialization, product or market
20 development, acquisition of other businesses, recapitalization
21 or similar business purposes;

22 C. shall manage the investments of the New Mexico
23 centers of excellence fund for the purpose of achieving risk
24 adjusted rates of returns at least equal to the national
25 average of rates of returns for early-stage and pre-seed

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1 venture capital funds; and

2 D. employs an individual responsible for the fund
3 who:

4 (1) has at least ten years professional
5 experience in direct equity investing, private placement
6 investments or investment banking and corporate finance;

7 (2) possesses professional credentials and
8 related experience in financial analysis, in assessing the
9 growth prospects of businesses or in evaluating business plans;

10 (3) has at least five years experience in
11 structuring and negotiating corporate finance transactions; and

12 (4) has established permanent residency in the
13 state. "